

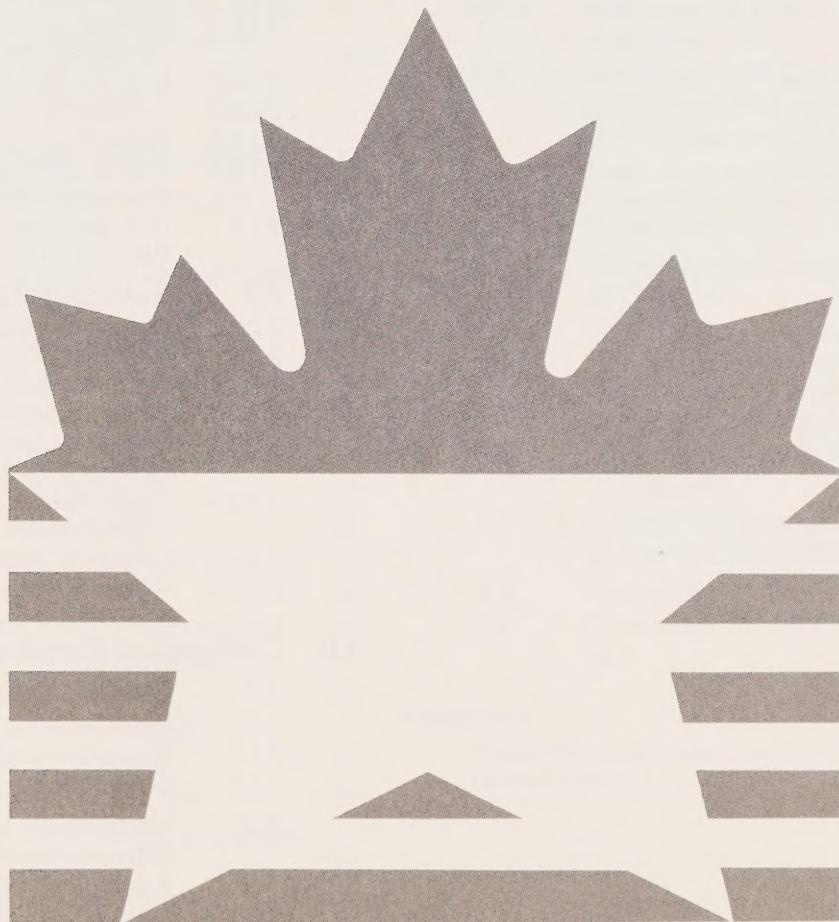
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Production Sharing Guidebook



CANADA — UNITED STATES
DEFENCE PRODUCTION SHARING PROGRAM

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DEFENCE PRODUCTION SHARING PROGRAM

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Trade Commissioner Service Offices in the United States



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1.0 Introduction

This guidebook has been written to provide guidance to Canadian manufacturers participating or wishing to participate in the Canada-U.S. Defence Production Sharing Program. Without going into a lengthy description of the program's origins, it is sufficient to say that defence production sharing is an implementation of the principles of defence economic cooperation between Canada and the United States for their mutual benefit in defence matters. The U.S. government authority for this program is expressed in Defense Acquisition Regulation (DAR) Section 6 Parts 5 and 14, the specific agreement being contained in DAR 6.1406.1(a).

Throughout this guidebook references are made to the U.S. Defense Acquisition Regulation (DAR), which is described in section 2.1.6. These references are included to facilitate study of this Regulation and for use as a ready reference authority in discussions with U.S. government and industry officials.

The program provides Canadian manufacturers with the opportunity to supply to the United States Armed Forces a wide range of defence supplies and services in competition with U.S. industry. A Canadian firm offering competitive price, delivery, and quality can obtain substantial United States defence business and will not generally encounter discriminatory legislative or regulatory restrictions, except as noted in Chapter 5.

Because the United States defence market is so large it attracts a large number of suppliers, with consequent fierce competition. Not only must a Canadian company price its products competitively to be successful in bidding but it must maintain the highest standards in contract performance to meet the buyer's expectations.

To implement production sharing the United States government waives United States Customs duties on most Canadian supplies entering the United States for defence programs. This waiver officially applies to prime contracts placed by the U.S. government with Canadian suppliers, and has been extended by the U.S. government to cover subcontracts placed by defence contractors in the United States with Canadian suppliers for defence work. The Buy American Act has been waived for all defence supplies made in Canada. Balance-of-payments directives, which implement the policy of the United States Department of Defense of reducing defence expenditures abroad, do not apply to United States procurement of Canadian defence supplies and services for use in the United States or Canada.

The Canadian government does not require a Canadian firm to obtain an Export Permit for the export of defence goods to the United States under the Program. This applies to both prime contracts and subcontracts.

Within the Canadian government the Defence Programs Bureau of the Department of External Affairs is responsible for administering the Defence Production Sharing Program in Canada. The Trade Commissioner Service maintains representatives in the United States (see Appendix) to promote the Program and to provide on-the-spot assistance to Canadian defence industry. Canadian companies interested in the Program are urged to contact the U.S. Division of the Defence Programs Bureau in Ottawa. The mailing address is:

Director, U.S. Division (TDU)
Defence Programs Bureau
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Telephone: (613) 996-1814

2.0 Selling to the United States Defence Market

As mentioned in the Introduction, a Canadian manufacturer may sell defence supplies to the United States either as a prime contractor or as a subcontractor to American prime contractors (or to American or Canadian subcontractors as a lower tier subcontractor). Since the rules differ for each of those cases, the first part of this chapter will focus on the Canadian firm as a prime contractor, and the second part on it as a subcontractor.

2.1 Prime Contracting

2.1.1 United States Military Acquisition Agencies

The United States military structure is headed by the Secretary of Defense whose Department of Defense (DOD) is the policy group. Each of the three Armed Services is organized into an operational Military Department, designated the Departments of the Army, Navy and Air Force. Each of these Military Departments is responsible for acquiring materiel and services peculiar to its requirements.

In addition to the Armed Services Departments, the following agencies of the Department of Defense acquire materiel and services —

- a) the Defense Logistics Agency (DLA) — requirements not peculiar to sophisticated defence systems or to a single Military Department — DLA in turn has established several Defense Supply Centers, each responsible for acquiring a number of different commodity areas.
- b) Defense Communications Agency
- c) Defense Nuclear Agency

The acquisition policies and practices of the Department of Defense and of the Military Departments are codified in a publication known as the Defense Acquisition Regulation (DAR). Throughout this book reference will be made to various parts, sections, and paragraphs of the DAR, but the sheer size of the document makes reproduction of all relevant excerpts in this handbook impracticable. Canadian companies can consult the DAR by contacting DPB at its Ottawa location or by purchasing their own copy from the Superintendent of Documents (see paragraphs 2.1.5.2). The acquisition regulations of the Military Departments and other defence agencies require that they normally place prime contracts for Canadian products and services with the Canadian Commercial Corporation (CCC), which in turn places a back-to-back contract with the Canadian company concerned.

2.1.2 Canadian Commercial Corporation (CCC)

The Canadian Commercial Corporation (CCC), a Canadian Crown Corporation, established by an Act of Parliament, acts primarily as a contracting agency when other countries or international agencies wish to purchase Canadian supplies and services from the Canadian government. The CCC subcontracts the foreign requirement completely to Canadian industry.

2.1.3 U.S. Military Solicitation and Bidding Procedure

CCC contracts with the Department of Supply and Services to provide the "Export Supply Centre" (ESC), an agency which, on behalf of CCC acts as a "prime contractor" to the appropriate U.S. Defence acquisition agencies. As such it receives and distributes to Canadian suppliers the solicitation documents "Bid Sets" relating to U.S. military requirements.

These Bid Sets which originate with the U.S. military acquisition agencies are mailed directly to both the CCC/ESC and the Canadian firms whose names appear on the agencies' Bidders Mailing Lists (see paragraph 2.1.5). Attached to each Bid Set received by CCC/ESC is a list of the Canadian addressees to whom it was mailed directly.

*Those Canadian companies interested in pursuing the U.S. military market should register with CCC/ESC as early as possible, since CCC/ESC must have a record of the company and its capabilities before certifying bids.

The Bid Set may take the form of an INVITATION FOR BID, REQUEST FOR PROPOSAL, or a REQUEST FOR QUOTATION as follows:

2.1.3.1 Invitation for Bid (IFB)

The IFB is a formally advertised competitive procurement available on request to any person in any country. It is the acquisition method used for the purchase of about 80 per cent by number of all U.S. military acquisitions. Because considerable competition is expected for each IFB it is conducted in strict accordance with clearly defined procedures. Acceptance by the U.S. agency of a bid will result in an immediate award and thus the bid document must be considered as a binding contract at the time of submission. There are provisions and procedures for appeal by unsuccessful bidders, information on which can be provided by CCC/ESC.

The IFB will define, in its contractual clauses, any restrictions which would preclude the award of a contract to any particular bidder. (See Chapter 5 — Limitations of the Program).

Because the accepted bid immediately becomes a legally binding contract, care must be taken to avoid errors in prices and delivery commitments and misinterpretations of packaging requirements, specifications, etc. Changes to a bid cannot be made after bid opening unless the otherwise successful bidder wishes to make his bid more attractive to the U.S. agency.

Since many clauses in standard bid documents do not apply to Canadian companies, any questions regarding these clauses should be cleared with CCC/ESC by telephone.

Bids should be submitted so as to be received in the office designated in the IFB not later than the exact time set for the closing of bids. If a bid is not received to meet the closing date, it will still be considered if it can be proved that it was mailed at least five (5) days in advance of the opening date. The only acceptable proof of mailing date is a postal receipt bearing a legible postmark on the wrapper of the package containing the bid. Bids normally must be submitted in writing, but can be readjusted by telex or telegram prior to bid opening, if bid package so directs.

A considerable amount of bid information is available from the U.S. military command concerned or from private U.S. agencies for a fee. This information can be of much assistance to a bidder and it is suggested the Canadian company contact the local Canadian Trade Commissioner regarding procedures, etc.

2.1.3.2 Request for Proposal (RFP)

The RFP is a competitive acquisition in most instances, open only to firms which are specifically known by the procurement agency to possess the capability to respond. It is the acquisition method used for the purchase of about 80 per cent of the dollar value of all U.S. military procurements.

An RFP can be issued on a sole source, with subsequent negotiations conducted with the prospective contractor through a "best and final offer" process.

A proposal in response to an RFP is a firm offer for the period of time stated in the proposal. It may be withdrawn by the company by notice in writing to the U.S. acquisition agency prior to acceptance of the proposal. Although the RFP is used for negotiated acquisition, award may be made and a binding contract come into being on the basis of the initial proposal. Should the U.S. acquisition agency initiate negotiations to vary the terms of the initial proposal, signature of both CCC and the U.S. agency is required for a contract to exist.

2.1.3.3 Request for Quotation (RFQ)

The RFQ is a solicitation of price and availability and consequently the response to an RFQ is not irrevocably binding. A response to an RFQ is considered by the U.S. agency to be information rather than a firm offer, and a time period may be stated for which the information in the quotation is valid. An order placed on the basis of a response to an RFQ is subject to acceptance by the offerer.

NOTE: BIDS, COMPETITIVE PROPOSALS AND QUOTATIONS ARE TO BE MADE IN UNITED STATES CURRENCY, AND THE RISK OF FLUCTUATION IN THE EXCHANGE RATE WILL BE TO THE ACCOUNT OF THE CANADIAN COMPANY, NOT TO CCC.

Negotiated sole source offers (RFPs, RFQs) may be submitted in terms of Canadian currency. (DAR 6-504.1a(4))

2.1.4 CCC's Solicitation Activity

When Bid Sets from U.S. military acquisition agencies are received by the CCC they are submitted to close scrutiny to determine whether they are suitable for solicitation of Canadian firms. Suitability depends upon the following:

- a) adequacy of time for bid preparation,
- b) knowledge of one or more Canadian sources with a known capability or interest,
- c) the absence of terms or conditions which would restrict or prohibit the possibility of an award to a Canadian supplier, etc.

Each Bid Set declared biddable is assigned to an Enquiries Officer. This officer is responsible for all administrative aspects of that requirement i.e.:

- a) the make-up and issuance of the solicitation to the identified Canadian sources,
- b) provision of supplemental information, amendments, etc.,
- c) assistance to the companies in the preparation of the bid, proposal or quotation,
- d) receipt and examination of the company offer to the Corporation,
- e) preparation and submission of the CCC response to the U.S. bid set,
- f) follow-up and all other activity up to the receipt of a contract by CCC, an award to other than a Canadian firm, or cancellation of the requirement.

Contracts received by CCC from Canadian bids are assigned to CCC purchasing branches for award to the Canadian bidder; the purchasing branch Engineering Procurement Officers are responsible for both the contract between CCC and the U.S. military acquisition agency and the ensuing contract between CCC and the Canadian firm.

It should be noted that, regardless of the channel through which a Canadian firm receives a solicitation from a United States acquisition agency, any response must be submitted to the Canadian Commercial Corporation, Ottawa. An exception to this procedure frequently occurs for small purchases of \$10,000 (U.S.) and less, in which case the U.S. military acquisition agency may solicit Canadian firms, receive bids, and issue a contract directly to the successful bidder. The mailing address of CCC is:

Canadian Commercial Corporation
7th Floor, Tower "C"
Place du Portage, Phase 3
11 Laurier Street
Hull, Quebec K1A 0S6

If a Canadian company receives a solicitation document from an agency other than the Canadian Commercial Corporation, and does not receive, within three days, instructions from CCC which include the closing date in Ottawa for the submission and the identity of the officer handling the enquiry, a telegraphic request for that information should be addressed to the U.S. Division, Export Supply Centre CCC, or telephone: (819) 997-3314

2.1.5 Sources of Contract Opportunities

Many sources of information are available to Canadian firms to keep informed of and explore contract opportunities offered by the U.S. Procurement Agencies. Some of the sources are identified in the following paragraphs.

2.1.5.1 U.S. Bidders Mailing Lists

A Bidders Mailing List is usually maintained by the U.S. Acquisition Agencies for each commodity. Canadian firms wishing to be listed for the appropriate commodities must apply to the Canadian Commercial Corporation which will ask for detailed information on the company's engineering, manufacturing and financial capabilities before endorsing a company's request for listing.

By regulation, no U.S. military acquisition agency may list a Canadian supplier unless CCC certifies and forwards the application for listing. Listed sources receive copies of relevant solicitations directly from the acquisition agency.

However Canadian companies can request bid packages direct from a command even though they were not drawn from automated bid list. A review of the Commerce Business Daily (CBD) referred to below, will identify opportunities.

Retention of names on Bidders Mailing Lists at U.S. military acquisition agencies is dependent upon a response to each IFB, RFP and RFQ, by a bid, proposal, or quotation or a brief note giving the reason for not otherwise responding. This notice should be sent directly to the U.S. agency concerned if the document is received directly from the agency, with a copy of the notice to CCC. When the IFB, RFP or RFQ is received from CCC, the Failure to Quote Notice enclosed with the solicitation should be completed and returned to CCC. The agency will then be advised by the Corporation on behalf of the Canadian company. U.S. military acquisition agencies have made a practice of removing company names from Bidders Mailing Lists after two failures by a prospective bidder either to submit a bid, proposal or quotation or to otherwise respond.

2.1.5.2 Commerce Business Daily

The Commerce Business Daily, published five times a week by the U.S. Department of Commerce, provides valuable information to companies interested in bidding into the U.S. defence market. Information on contract awards, current requirements, Pre-Invitation Notices and Advance Planning Procurement Information (APPI) is published regularly. Interested Canadian companies should subscribe to the Commerce Business Daily by forwarding an application to:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402
Telephone: (202) 783-3238

The annual subscription is U.S. \$175 (First class mailing) and a six-month trial subscription is U.S. \$90. Remittance should be sent to the U.S. Government Printing Office by cheque payable to Superintendent of Documents. It will take at least six weeks for delivery of first issue. It is strongly recommended that Canadian firms subscribe via airmail because requirements advertised on the CBD frequently close only a few days after the advertisement and the time left to prepare bids is often critically short. Companies are reminded to include their full mailing address when they forward their application and remittance.

2.1.5.3 Sales Representatives

Canadian firms producing technically sophisticated items cannot rely on listing with CCC to guarantee opportunities to bid on U.S. defence requirements. U.S. military acquisition agencies generally invite proposals only from companies whose technical abilities are known to them. Therefore such companies find it essential to have knowledgeable representatives call on the cognizant officials in the acquisition agencies and convince them of their companies' competence. To be effective, such visits must take place well before a solicitation document is issued.

A company decision may be required whether to employ its own personnel in such activities or to retain a locally appointed sales organization to make the necessary contact. There are various factors to consider and these are rather different from those influencing the selection of an agent to seek straightforward subcontract work.

When contemplating appointment of a sales organization, the manufacturer has to satisfy himself that the representative is well acquainted with cognizant technical and buying offices of the U.S. military agencies, and has demonstrated an up-to-date knowledge of potential requirements. If the Canadian product is to be offered for a classified U.S. defence program, the security clearance situation of a U.S. citizen working for a Canadian company needs to be clarified. See Chapter 4.5 for additional information on this matter.

In making this decision, Canadian companies should realize also that bid sets for the more routine requirements are obtained easily from CCC, without the need of personal intervention at the U.S. agency. If a Canadian firm decides to appoint an agent, trade commissioners located in the United States, listed in the appendix on page 27 can be helpful in locating suitable candidates.

Many IFBs, RFPs and RFQs responded to by the Canadian Commercial Corporation include a requirement for a statement as to whether an outside sales organization was used to solicit the business. If so, and if the submission is successful, details of such representation may be required on DOD Form 119.

Furthermore, representatives seeking prime contracts must conform to DOD standards, set out in section I, Part S, of the U.S. Defense Acquisition Regulation, entitled "Contingent or Other Fees". This requires representatives to be "bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business". There should be a continuity of relationship between the company and the sales agency, temporary agents being ruled out, and commission rates should be fair and reasonable.

2.1.5.4 Industrial Preparedness Production Planning Program

Under the Industrial Preparedness Production Planning Program the U.S. Department of Defense is continuously re-appraising the production capabilities of the U.S. industrial base to ensure that it is capable of producing adequate and timely quantities of material as may be required to support the U.S. Armed Forces in times of emergency. DOD policy allows selected Canadian firms to participate on an equal basis with U.S. firms as Planned Producers for a wide range of defence items under this Program. Through an agreement negotiated with the DOD, CCC/ESC is responsible for the management of Canadian industrial participation in the program, in particular, the establishing of Canadian firms with the U.S. Military Acquisition Agencies as Planned Producers. A Planned Producer of a defence item at the prime contract level is guaranteed an opportunity to compete for current acquisition of that item.

A non-participating Canadian firm may initiate action to become a Registered Planned Producer in the program by first evaluating its capabilities to determine whether participation as either a prime or subcontract planned producer is desirable. In this evaluation, consultation with CCC/ESC is required. If Prime Contract Planning is indicated, the firm should specify its desire to be a Planned Producer for a particular item by writing directly to the appropriate U.S. acquisition agency. This letter should include an indication of production capabilities and a listing of current and past military production contracts of the proposed item. If Subcontractor Planning is indicated, the firm should write a similar letter directly to the selected prime contractors with whom the firm has held subcontracts. In the latter case the correspondence should be to the attention of the Industry Planning Representative.

Participation in this program has resulted in substantial business for some Canadian producers. Canadian companies are urged to give it thorough consideration. As a registered planned producer the Canadian company is assured of receiving any RFP issued for the part he has registered. Additional detailed information can be obtained from the CCC/ESC (telephone: (819) 997-5265).

2.1.6 U.S. Defense Acquisition Regulation (DAR)

To end this section, DAR paragraphs 6-504 and 6-505, dealing with purchases from Canada by U.S. military acquisition agencies, agencies are reproduced for reference.

6-504 Procedures for Canadian Purchases.

6-504.1 Bidding Procedures.

a) Solicitation of Canadian Firms.

- (1) Except as provided in (2) below, Canadian firms shall be included on bidders mailing lists and comparable source lists only upon request by the Canadian Commercial Corporation. Such requests shall be forwarded by the Canadian Commercial Corporation to the activity having acquisition responsibility for the supplies or services involved.*
- (2) Canadian planned producers under the Industrial Readiness Planning Program shall be included on bidders mailing lists for their planned items.*
- (3) Solicitations shall be sent directly to Canadian firms appearing on the appropriate bidders mailing lists. A complete copy of the solicitation and a listing of all Canadian firms solicited shall be sent to the Canadian Commercial Corporation Export Supply Centre.*
- (4) Upon request by the Canadian Commercial Corporation, solicitations shall be furnished to it even though no Canadian firms were solicited.*
- (5) Small purchases, as defined in Section III, Part 6*, (of the DAR) normally should be handled directly with Canadian firms and not through the Canadian Commercial Corporation.*

*MAINLY MEANS PURCHASES OF LESS THAN \$10,000.

b) Submission of offers

- (1) As indicated in 6-504.2 below, the Canadian Commercial Corporation should normally be the prime contractor. In order to indicate its acceptance of bids or proposals by individual Canadian companies, the Canadian Commercial Corporation issues a letter supporting the Canadian offer and containing the following information: name of the Canadian offerer; confirmation and endorsement of the offer in the name of the Canadian Commercial Corporation and a statement that the Corporation shall subcontract 100 per cent with the offerer.*

- (2) When a Canadian offer cannot be processed through the Canadian Commercial Corporation in time to meet the bid opening requirement or the closing date for receipt of proposals, the Corporation is authorized to permit Canadian firms to submit offers directly. Provided that the Canadian offer and the Canadian Commercial Corporation endorsement are both received by the contracting office prior to bid opening or the closing date for receipt of proposals.
- (3) All formal competitive bids shall be submitted by the Canadian Commercial Corporation in terms of United States currency. Contracts placed as a result of such formal competitive bidding shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.
- *(4) All offers and quotations submitted by the Canadian Commercial Corporation, except those in which competition is obtained, shall be in terms of Canadian currency. However, the Corporation may, at the time of submitting the offer, elect to quote and receive payment in terms of United States currency; in which event contracts arising therefrom shall provide for payment in United States currency and shall not be subject to adjustment for losses or gains resulting from fluctuation in exchange rates.

*SEE SECTION 2.1.3.3. ON PAGE 7 FOR CCC POLICY ON THIS POINT.

6-504.2 Contracting Procedures

- (a) Individual contracts covering purchases from suppliers located in Canada, except as noted in (b) below, shall be made with the Canadian Commercial Corporation, which has offices located at the Export Supply Centre, 11 Laurier Ave., Hull, Quebec, Canada (Mail address — Canadian Commercial Corporation, Export Supply Centre, Ottawa, Ontario, Canada K1A 0S6) and at 2450 Massachusetts Avenue, N.W., Washington, D.C. 20008. Contracts normally should be awarded to and administered through the Export Supply Centre office in Hull, and all payments under such contracts awarded to the Canadian Commercial Corporation shall be made to that Office. Under contracts with the Canadian Commercial Corporation, direct communication with the Canadian supplier is authorized and encouraged in connection with all technical aspects of the contract — provided, however, that the approval of the Corporation shall be obtained on any matters involving changes to the contract.
- (b) The general policy in (a) above need not be followed for purchases negotiated for experimental, developmental or research work, under 3-205 and 3-211, unless the contract is for a project under the Defense Development Sharing Program, as outlined in 6-1406.1; purchases negotiated under 3-202 for public exigency; purchases negotiated under 3-203 for small purchases; or, purchases made by Defence activities located in the Dominion of Canada.
- (c) Prices in the contract shall identify the type of currency: i.e. United States or Canadian.

6-504.3 Termination Procedures

The Canadian Commercial Corporation will continue to administer contracts that may be terminated by the United States contracting officer and settle all Canadian subcontracts in accordance with the policies, practices, and procedures of the Canadian Government in the termination and settlement of Department of Supply and Services (Canada) contracts (See 8-216). The United States agency administering the contract with the Canadian Commercial Corporation shall render such services as are required by the Canadian Commercial Corporation with respect to settlement of any sub-contracts placed in the United States, including disposal of inventory. The settlement of such United States subcontracts shall be in accordance with this Regulation.

6-505 Contract Administration

- (a) When services are requested from the Defence Contract Administration Services on contracts to be performed in Canada, the request shall be directed to:
Defense Logistics Agency, DCASMA, Ottawa, 365 Laurier Avenue West
Ottawa, Ontario, Canada, K1A 0S5
- (b) When contract administration is performed in Canada by Defense Contract Administration Services, the paying office activity to be named in the contract for disbursement of DOD funds (DOD Department Code: 17-Navy; 21-Army; 57-Air Force; 97-for all other DOD components) whether payment is in Canadian or United States dollars shall be:
Disbursing Officer, DCASR, Cleveland
1240 East 9th Street
Anthony J. Celereeze
Federal Building
Cleveland, Ohio 44199

2.2 Subcontracting

2.2.1 Nature of Subcontracts

Contracting between Canadian and U.S. manufacturers for defence goods is strictly on a company-to-company basis. The Canadian company offered a defence subcontract should operate in a normally prudent manner, just as in a non-defence commercial venture. The terms and conditions of the proposed subcontract should be clearly understood, including all obligations to be assumed. The terms and conditions under which payment will be received, and under which special tooling, technical data and other assistance may be furnished by the customer, should be clearly understood at the outset. These may be partially dependent on the terms and conditions of the prime contract between the U.S. government and the U.S. firm. The Canadian subcontractor has no claim on either the Canadian or the U.S. government.

There is an increasing tendency for the U.S. government to demand that its prospective defence contractors meet high standards of management practice as well as technical and production capability. This is reflected in the demands of large U.S. defence contractors that their prospective suppliers satisfy, in advance of orders, the same criteria. Therefore a Canadian company discussing defence orders with U.S. firms may well find itself being asked by the U.S. firms to permit surveys of its management control and quality control systems, its engineering and manufacturing capabilities, and an assessment of its financial competence. The U.S. Defense Acquisition Regulation generally requires, on any negotiated contract, that the contractor submit cost or pricing data in support of his proposal. (DAR3-807.3). Bids submitted through CCC are exempt from this requirement but stipulate that CCC certify that the bid is "fair and reasonable". Subcontracts from U.S. prime contractors are not exempt. The U.S. Department of Defense has agreed:

- a) that such data may be submitted to the Department of Defense contracting agency rather than to the prime contractor; and
- b) that the appropriate Canadian DSS form may be used rather than the U.S. DOD Form 633.7.

This agreement does not affect prime-subcontractor relationships, and a prime contractor may require, although there is no U.S. government requirement therefor, that cost and pricing data be submitted to and through him, the prime contractor.

2.2.2 Sources of Subcontract Opportunities

2.2.2.1 Sales Representatives

Because defence contractors in the U.S. are very widely dispersed throughout the country many of those companies may choose to ignore lists of approved suppliers issued by the U.S. and Canadian governments and rely upon personal contact instead. The necessity of sales representatives to maintain persistent contact with the U.S. companies cannot be over-emphasized. Such contact is essential in order that these companies become aware of Canadian suppliers and develop a willingness to consider them as suppliers in defence programs.

2.2.2.2 Trade Commissioner Service Officers

Trade Commissioners are located at a number of places throughout the United States (see *Appendix for list of offices*). These officers are familiar with the defence industries located within their territory, and are prepared to assist Canadian industry in seeking out business opportunities. They can provide guidance as to the major areas of activity within each company in the territory. Additionally, they can arrange appointments with buyers interested in specific capabilities. Canadian companies are urged to use the services of these officers.

2.2.2.3 Trade Fairs, Exhibitions and Other Contacts

Business Opportunity Exhibitions, sponsored by trade and industrial groups and the U.S. Department of Defense, together with local Chambers of Commerce, are held periodically across the United States. These provide a favourable atmosphere for contacts with U.S. defence contractors since their purpose is to generate business. Frequently Canadian companies are welcome to participate as well as attend.

The Department of External Affairs sponsors exhibitions of Canadian industrial products in a number of trade fairs in the U.S., which attract U.S. and Canadian defence contractors. Canadian companies should discuss possible participation with this Department. Enquiries should be addressed to:

Director, United States Marketing Division (UTM)
Department of External Affairs
125 Sussex Drive
Ottawa, Ontario K1A 0G2

Officials of Defence Programs Bureau may, where appropriate, attend these fairs in order to discuss the Production Sharing Program with U.S. buyers visiting the exhibitions.

2.2.2.4 Lists and Trade Directories

The U.S. DOD often publishes lists of defence contractors for various weapons systems. Trade directories in the U.S. provide names and addresses of U.S. contractors by product category, and Canadian trade commissioners in the United States can be helpful in obtaining this information.

2.2.2.5 Incoming and Outgoing Missions

Federal and Provincial agencies also sponsor (a) incoming missions and (b) outgoing missions of Canadian industrialists to other countries including the United States.

3.0 Contractual Requirements

3.1 Specifications and Standards

The need for defence materiel to withstand severe handling and operational environments dictates the need for components and materials to meet strict standards of quality. Military Specifications (MIL Specs) have been developed for most materials and components and the supplier must meet these specifications. The specific requirements to be met on any particular solicitation are listed, or "called up" in the Bid Set.

Military specifications and standards are available by mail from:

Naval Publications and Forms Center
(N.P.F.C.)
5801 Tabor Avenue
Philadelphia, PA 19120
Telephone: (215) 697-2000

NPFC prints and distributes all the military series documents and distributes within DOD the industry specifications and standards adopted by the Military Services.

To fulfill a request for a specification the NPFC requires the number assigned to the specification and preferably also its title. When the document is positively identified, there is virtually no difficulty in obtaining a copy. DOD requires no justification for ordering copies of specifications or standards, and there is no charge for a single copy.

When a company urgently requires specifications in order to respond to a U.S. Bid Set, a telegraphic request, stating the solicitation number and the need for the document in order to bid, will receive a prompt response. Routine mail requests are answered with much less dispatch.

One available aid to identification is the DOD Index of Specifications and Standards (DODISS) which lists approximately 25,000 current specifications and 10,000 standards. It is available on an annual subscription basis from:

Superintendent of Documents
Government Printing Office
Washington, D.C. 20402.

The U.S. National Bureau of Standards has a research service available to the public and publishes an index of U.S. Voluntary Engineering Standards which contains a listing of some 20,000 documents and the source from which they may be ordered. This publication can also be ordered from the Superintendent of Documents at a price of \$9 a copy. It is also available in microfiche at 75 cents per set.

3.1.1 Specifications by Subscription

Military and Federal Specifications and Standards including Qualified Products Lists (See 3.3 below) can be obtained on a subscription basis with automatic mailing.

Subscriptions will be accepted on the basis of the Federal Supply Classification for a single class or for as many individual classes as the subscriber chooses. Applicable classes may be determined by referring to the list of "Federal Supply Groups and Classes", Cataloguing Handbook H2-1, which is available free of cost from:

The Director
Navy Publications and Printing Service Office,
700 Robbins Avenue,
Philadelphia, PA 19111

The Federal Supply Classification System is the basis for inventory and supply management systems of all U.S. government agencies.

Subscriptions may be forwarded at any time to the above address in any form accompanied by a certified bank cheque or postal money order payable to the Treasurer of the United States. The subscriptions cost \$9.00 (U.S.) per class per year and include revisions issued during that year. The subscriber should provide the class title as given in Handbook H2-1 for each class listed in his subscription order.

3.1.2 Prime Contracts

Canadian companies receiving solicitations from U.S. military agencies, including those received through CCC, will normally find that MIL Specs for components, material, testing, packaging, packing, etc. and Federal (FED) standards are not provided with the bid package. The procedures outlined above should be followed to obtain all unclassified specifications and standards. To receive classified specifications and bid support documents, a request must be made to CCC. The request must include the solicitation number, the U.S. Agency issuing it, the closing date of the bid, and the name and telephone number of the U.S. contracting officer, if known.

It should be noted that statements of work to be performed, drawings, etc. can be obtained only from the agency originating the solicitation. Normally, the name, address, and telephone number of the person to contact at the soliciting agency office is in the bid package. If the information is not given in a bid set the Canadian company should immediately wire Canadian Commercial Corporation or phone (819) 994-3314

3.1.3 Subcontracts

Drawings, specifications, and other unclassified technical data required to perform the work are normally furnished by the U.S. prime contractor. Standard specifications should be obtained as described in 3.1.

A Canadian firm wishing to obtain classified material from a U.S. defence contractor in connection with subcontract work should seek assistance from

CCC/ESC which will make the necessary arrangements.

3.2 Inspection and Reciprocal Government Quality Assurance Arrangements

The production of defence supplies in accordance with military Quality Assurance standards is an essential element of military acquisition. An inter-governmental arrangement, whereby inspection (including testing) of such supplies and services (including, when appropriate, raw materials, components and intermediate assemblies) exists between Canada and the United States.

3.2.1. Method of Application

By virtue of this arrangement, the Canadian Department of National Defence (DND) will, upon request by U.S. military agencies, arrange for personnel of the Department to conduct Quality Assurance on behalf of the U.S. government with respect to contracts placed by the Military departments and DAR with CCC/ESC and with respect to sub-contracts placed in Canada by U.S. defence contractors. Such personnel and facilities are provided without cost to the U.S. military procurement agencies. In their turn, the U.S. Military Departments upon request provide, and make no charge for, quality assurance services and facilities in connection with contracts placed in the United States by the Canadian governments, or with respect to subcontracts placed in the United States by Canadian contractors who are performing Canadian defence contracts.

In addition, either DND or any U.S. military acquisition agency may, in appropriate or exceptional cases, arrange for government Quality Assurance by its own organization in the other's country.

In Canada, the quality assurance function is carried out by the Director General, Quality Assurance, DND. Complete information or guidance on Military requirements for a system of Quality Control and/or inspection may be obtained by application to this Directorate.

It will be appreciated that only a government agency may request quality assurance to be carried out at source by the other government. No contractor may directly request quality assurance action by a government, but he may suggest to his military customer that such arrangements be made. However, if he so wishes, a prime contractor may carry out source inspection himself at the plant of his subcontractor, but it is then a matter of agreement between the two companies and neither government is involved.

3.2.2 Quality Control

The United States Department of Defense (DOD) policy regarding the responsibilities for the controls of quality is reflected in the terms, conditions or technical requirements (specifications) of military contracts.

The successful bidder must fully comply with these requirements: therefore, Canadian companies seeking U.S. defence orders should, for their own protection, be aware of DOD policy and what the provision of the required assurance will entail.

The contractor is held responsible for the control of product quality and for offering to the military acquisition agencies, for acceptance, only those products determined by him to conform to contractual requirements. The contractor is required to have available adequate test facilities for executing the prescribed examinations and tests itemized in part 4 (Quality Assurance Provisions) of Specifications, or make arrangements for the utilization of suitable test facilities.

3.2.3 Quality Assurance

Government Quality Assurance during the manufacturing process will be requested by the customer agency only when it is impractical or impossible to verify quality after receipt of the article. Adequate quality control of material and components will be maintained by both DND and DOD to preclude unnecessary Q.A. requirements at the final manufacturing plant.

Canadian Government Specifications DND 1015, DND 1016 and DND 1017, which describe Canadian government quality assurance requirements, are equivalent to U.S. Government Specifications MIL-Q-9858, MIL-I-45208 and U.S. Defense Acquisition Regulation (DAR) Section 14-302 respectively. Approval and acceptance of a contractor's quality assurance programs and systems are covered by comparable procedures in the two countries. Quality assurance functions in respect to these specifications will therefore be performed in accordance with the procedures of whichever country provides the quality assurance service.

3.3 U.S. Product Qualification and Qualified Products Lists

Qualification is defined as the testing of products for compliance with the requirements of a Specification, in advance of and independent of any acquisition action. Only a small percentage of commodities are required to be qualified prior to award of a contract. Qualification is made a Specification requirement only when one or more of the following conditions exist:

- a) Time required for testing the product after a contract award would unduly delay delivery of the supplies being purchased.
- b) The cost of repetitive testing would be excessive.
- c) Tests require expensive or complicated testing apparatus not commonly available.
- d) Assurance is required, prior to award of contract, that the product is satisfactory for its intended use.
- e) Determination of acceptability would require performance data to supplement technical requirements contained in the Specification.

In such cases, the specification provides for advance testing of products and listing the products which successfully pass these tests, on lists known as Qualified Products Lists (QPL). These lists are then used in connection with acquisition by the Government or for the Government by its contractors. The fact that awards may be made only for products which have, prior to bid opening, been tested and approved for inclusion on the QPL, makes it necessary for the prospective suppliers to arrange for testing of their products without delay. Waiting until acquisition has been initiated usually does not allow sufficient time for the testing to be completed prior to bid opening.

When it has been determined that a product must be subjected to qualification testing, relevant information will appear in the applicable Specification.

3.3.1 Obtaining Qualification Approval

The adoption by Canada of the United States MIL (Military) Specifications for many parts and materials, and production in Canada to these Specifications, has simplified production sharing of these products.

Where both countries adhere to MIL Specifications, they produce identical items evaluated and approved by the same methods. An agreement has been negotiated between Canada and the United States, entitled "U.S.-Canada Agreement for Qualification of Products of Non-Resident Manufacturers".

The agreement allows one country's products to be listed by the other country in its Qualified Products List (QPL).

The scope of the agreement is indicated in the list of the Federal Supply Classes in Section 5. It should be noted that these classes cover a broad range of items, not all of which require qualification approval.

3.3.2 Procedure for Canadian Manufacturers

When a Canadian manufacturer wishes to supply a product covered by a Specification requiring qualification approval, he should first review the Specification and determine by actual test whether his product complies with the design and/or performance limits of the Specification.

If the product falls into one of the classes covered by the Reciprocal Agreement the manufacturer should request qualification action from:

Department of National Defence
Chief of Engineering and Maintenance
101 Colonel By Drive
Ottawa, Ontario K1A 0K2
Attn: DEMPS

Upon receipt of the request, DND will determine the eligibility of the parts for qualification and in most cases assess the manufacturer's in-plant test laboratory for ability to satisfy all the test requirements of the specification. Qualification tests will be conducted in the manufacturer's approved in-plant laboratory or in an approved commercial laboratory at the expense of the manufacturer, under DND supervision. The manufacturer will be notified

whether the product has met the qualification requirements of the Specification, in which case it will be listed on the appropriate Canadian QPL.

Having received qualification approval in Canada a Canadian company seeking a listing on a U.S. QPL must adhere to the following procedure to obtain listing on a U.S. QPL.

- a) The Canadian manufacturer requests DND to apply to the appropriate qualification authority in the United States for recognition of the Canadian Approval and listing on the U.S. QPL. DND, upon receipt of this request, will forward to the U.S. qualifying agency the necessary technical information including test reports and related engineering data for its consideration. If the tests upon which qualification were based were done in a facility located in the Canadian plant, then a report on the test facility will also be forwarded.
- b) The qualifying agency has 60 days upon receipt of the application to advise the Canadian manufacturer if it is prepared to recognize the approval and subsequently place the name of the Canadian company on the U.S. QPL. If for some reason the U.S. qualifying agency does not regard the supporting data as adequate, DND will be so advised and requested to supply further information.

NOTE: THE CANADIAN MANUFACTURER MUST HAVE RECEIVED HIS CANADIAN QUALIFICATION APPROVAL TO THE SPECIFICATION OF THE ISSUE AND DATE CURRENTLY IN EFFECT IN THE U.S.

3.3.3. Remarks

The fact that a product has been tested and included on a Qualified Products List is evidence only that a manufacturer can make a product of a type and grade which meets the Specification requirements. The qualification procedure is intended to eliminate delay in delivery of products by providing assurance prior to award of contract that the prospective supplier can produce a product which will meet the requirements of the Specification. It is neither a supplement to, nor a substitute for acceptance testing under contract. Inclusion on a list does not in any way relieve the manufacturer of his contractual obligation to furnish products which meet all the Specification requirements. The listing does not guarantee acceptance of the product in any future purchase nor does it constitute a waiver of the requirements of the Specification as to acceptance, inspection, testing or other provisions of any contract.

When the Canadian manufacturer's name is on the U.S. QPL most technical barriers to acceptance of the product will have been removed with regard to U.S. contracts for parts to MIL Specifications.

QPLs are under continuous review to ensure currency at the time of revision or amendment of the Specification. The intent to establish a QPL for a new Specification or to expand the number of sources on an existing QPL is advertised in the "Commerce Business Daily" (See 2.1.5.2).

A copy of the complete Canada-U.S. Agreement now forms a portion of DND document SB-1 which defines the conditions and procedures for Qualification approval of Electronic Parts and materials by DND. A copy of the document can be obtained from DND on request.

3.3.4 Potential Problems for Canadian Manufacturers

Experience indicates that Canadian manufacturers should take certain precautions to receive and maintain listing on the QPL. The first of these is the need to maintain Qualification Approvals up-to-date in Canada. Manufacturers are urged to apply for Qualification Approval at the earliest possible date and to maintain this approval by immediate action as soon as the Specification is modified or reissued.

If the Specification is amended, the U.S. qualifying authority allows a manufacturer a period of grace to requalify his product.

The following further information may be helpful to Canadian manufacturers who have not yet participated in the Production Sharing Program. In case of a direct enquiry from the United States, information accompanying an Invitation for Bid often indicates that only vendors holding Qualification Approval may bid; on other occasions the instructions may indicate that capable parts manufacturers may bid, provided they can get product approval within a stipulated period.

DND is prepared to offer all possible assistance in resolving the problems of qualifications and early contact will establish whether the particular product is covered by the existing reciprocal agreement, or whether application should be made directly to the U.S. qualifying agency for examination in the United States. Such information should be requested from:

Department of National Defence
Chief of Engineering and Maintenance
101 Colonel By Drive
Ottawa, Ontario K1A 0K2
Attn: DEMPS

It should be noted that the Agreement in no way bars a Canadian manufacturer from making direct application to the appropriate U.S. qualifying agency for examination and listing of his products, whether covered by this Agreement or not. Nevertheless, it will be apparent that a submission made by DND on the manufacturer's behalf will expedite action. By invoking the terms of the Agreement, the case has to be considered and a decision reached within a 60-day period, whereas the U.S. Qualifying agency is not obligated to act on a direct request.

3.4 Auditing and Cost Analysis

a) Post-Contract Cost Audits:

Post-Contract cost audits of U.S. defence contracts placed in Canada, either through CCC or directly by U.S. firms holding DOD contracts will be performed by the Audit Services Bureau (ASB) of the Department of Supply and Services on behalf of the U.S. Defense Contract Audit Agency (DCAA). These audits, when required, will be arranged for by:

Director, Contractual Cost and Financial Review
The Comptroller, Supply Administration
Department of Supply and Services
11 Laurier Street
Hull, Quebec K1A 0S5
Tel: (819) 997-7154

Further information with regard to these audits may be obtained from the above.

b) Pre-Contract Cost Analysis:

Canadian firms before receiving contracts from U.S. firms holding DOD contracts under certain circumstances may be requested to supply to the U.S. firm, or the DOD contracting officer, a completed "Cost Price Analysis" on U.S. DOD form D.633 and/or a Disclosure Statement in respect of U.S. Cost Accounting Standards (CAS). Before responding to such requests advice should be sought from:

Director General
Supply Policy Directorate
Department of Supply and Services
11 Laurier Street
Hull, Quebec K1A 0S5
Tel: (819) 997-7119

c) Special Audits by the U.S. General Accounting Office (G.A.O.):

Canadian firms receiving requests to carry out an audit from the U.S. G.A.O. should immediately contact the Director General, Supply Policy Directorate at the above address.

3.5 Priorities and Allocation

In the U.S., the distribution of defence materials is controlled by formal systems of priority and controlled material allotments. It is mandatory that all defence orders carry priority of allotment designation. Canada's participation in the U.S. system is implemented by forms, instructions and regulations agreed upon by the Department of Commerce of the United States and the Canadian government through the Department of Supply and Services. The agreement ensures that Canadian purchase orders for material from the U.S. for use in Canadian or U.S. defence programs are given equal consideration with comparable U.S. orders. Canadian orders without U.S. priority or allotment identification can be treated only as regular commercial orders. All contracts issued by Canadian Commercial Corporation to Canadian suppliers for U.S. requirements will, when issued, include the necessary priority rating and

allotment. All other Canadian importers of U.S. defence supplies will use the forms and applications prescribed by DSS, Materials Priorities Officer indicated below. When any assistance is required to secure an allotment of U.S. controlled materials or delivery on a purchase order placed with a Canadian distributor or with a U.S. supplier, or for changes in allotments or dollar limitations on purchases made under a priority rating, application shall be made to:

Materiels Priorities Officer
Supply Information and Data Management Branch
Department of Supply and Services
Place du Portage
11 Laurier Street
Hull Quebec K1A 0S5
Tel: (819) 997-5644

Many current U.S. defence programs are urgent. Meeting shipping dates is most important, not only for immediate reasons, but to give Canadian industry a good reputation with the U.S. Armed Services and their contractors. Canadian companies will have to make full and proper use of U.S. priorities and allocation procedures in order to meet contractual obligations.

4.0 Defence Industrial Security

If a project is "classified" in the United States, this implies that it is deemed to fall within the various categories or classifications pertinent to U.S. national security, i.e. CONFIDENTIAL, SECRET or TOP SECRET. (Canadian security classifications also include the category of RESTRICTED). When such a classification has been imposed on a project, or any portion thereof, the concurrence and approval of the cognizant U.S. Department of Defense (DOD) Agency is necessary prior to obtaining access to the project or to areas in which classified work is being done on the project.

To facilitate these procedures, agreements have been entered into between the United States and Canada whereby Canadian contractor personnel, with security clearance in Canada, can be sponsored by the Department of Supply and Services (DSS) for access to classified U.S. projects. Subject to the approval of the U.S. DOD, visits to U.S. contractors or military establishments can then be made.

4.1 Pre-Contract Requirements

4.1.1 Visits by Canadian Personnel to the United States

It should be determined, when making exploratory enquiries of U.S. Service personnel concerning visit arrangements, whether formal visit approvals are required to enter their facility. It will probably be necessary to process a visit request even for access to unclassified U.S. information and/or to discuss purely Canadian industrial capabilities and products.

When Canadian government and/or industrial personnel wish to visit U.S. government and/or industrial establishments on classified matters, or unclassified matters where visitor controls are exercised, formal visit approvals are obtained as follows:

- a) The request is submitted by the Canadian government department and/or Canadian company to the Security Branch, DSS, Hull, giving the following details:
 - (i) Full name of agency or company submitting the request;
 - (ii) Alphabetical listing of individuals concerned in the proposed visit, giving their full name, citizenship, date and place of birth, social insurance number and security clearance. The prerequisite here is that such personnel must have a Canadian security clearance granted by the Security Branch, Department of Supply and Services;
 - (iii) Full address of place to be visited, including street address, and if applicable, the name, rank, title and telephone number of the person to be visited;

- (iv) Specific purpose of the proposed visit, including the type of information or equipment to which access is required and the particular areas of interest and capability of the applicant's company;
 - (v) To obtain a renewal of a previous approval, quote the previous DSS request number, U.S. approval No., expiry date of previous clearance and, when applicable, the number of visits made under this previous authority.
- b) Canadian government sponsorship is granted by the DSS/Security Branch if the request is submitted in sufficient detail and if the purpose of the visit is within the known capabilities of the company.
- c) DSS then submits the request through its Washington office to the appropriate U.S. DOD agency, according to the project involved, and to the U.S. Service which has security cognizance over the facility to be visited. It should be noted that these are not necessarily identical.
- d) If, after processing, the U.S. DOD authorities approve the requested visit, they allot a visit clearance number for the particular request, and DSS is so advised. The DSS Security Branch then notifies the company of the clearance number and duration of the clearance. The facility to be visited is also notified of this clearance number, which should be quoted by the visitor in making his arrangements for a specific visit. U.S. Army, U.S. Navy and U.S. Industrial facilities require 72 hours confirmation notice prior to a visit, while the U.S. Air Force requires 48 hours advance notice. Details will be included in the DSS notification of visit approval.

It should be noted that the U.S. Services normally require 30 working days in which to conduct the required processing of a visit request and an additional 10 working days is required by the DSS/Security Branch. Due to time factors and the complex routine involved in determining the acceptability of a proposed visit, it is essential to consider carefully the time element in any planning for participation in U.S. defence contracts.

Under extraordinary circumstances more rapid approvals can be obtained where invitations have been extended by U.S. Service Personnel to attend specific symposia, briefings, bid conferences, etc. In such cases it is essential that details of invitations, such as date, name, rank, and title of inviting officer, as well as other pertinent details be in writing so that a copy may be submitted with the visit request.

A visit clearance to a U.S. establishment permits access to classified information on an oral and visual basis only; see Section 4.4 of this Chapter regarding exchange of classified documents.

Visit clearances may be approved for either single or repetitive visits over a one-year period. In addition, similar clearance routes are available for visit arrangements where Canadian classified information is involved.

4.1.2 Visits by U.S. Personnel to Canada

In the event that U.S. businessmen wish to visit Canadian companies involved in classified projects, the procedure is as follows:

- a) Application is made by the U.S. Plant Security Officer to the local representative of the U.S. DOD which has plant cognizance, including such details as are required by normal U.S. visit procedure, i.e. names, purpose of visit, etc.
- b) The security clearance of the applicant is verified by the U.S. DOD representative and, if no release of U.S. military classified information is involved in the proposed visit, the request may then be transmitted through the Defense Industrial Security Office (DISCO), Columbus, Ohio, to the U.S. Embassy in Ottawa for forwarding to the DSS Security Branch.
- c) Where release of classified U.S. military information is involved, the local DOD representative processes the request through his Headquarters and, if approved, the requests are then transmitted to the Military Attaché of the U.S. Embassy in Ottawa, for direct transmission to the Security Branch, DSS.
- d) When the visit request is approved by the Security Branch, a visit clearance number for the particular request is allotted and the requesting company is advised through the U.S. Embassy. The Canadian company to be visited is also notified by the DSS Security Branch.
- e) Personnel who are thus cleared must advise the Canadian company at least 48 hours in advance of their arrival.
- f) The Canadian portion of the visit clearance procedure can normally be accommodated within 3-5 working days.

Visit requests by U.S. Service personnel, on either classified or unclassified matters, are handled as outlined in paragraphs iii, iv and v above.

4.2 Contractual Requirements

Award of a prime or subcontract to a Canadian firm by the U.S. Armed Service or their prime contractors is *prima facie* evidence that releasability and need-to-know have been established to the satisfaction of the U.S. Security Authorities. While visit requests are still required, the handling of such requests can be expedited with the inclusion of all contract and/or subcontract details in the formal visit submission.

4.3 Facilities Clearances for Canadian Firms

To enable a U.S. contractor or U.S. government procurement agency to determine the security status of a potential Canadian contractor, the following action is taken:

- a) The U.S. DOD transmits a written request for facility clearance to the DSS/Security Branch through the channels indicated above. If the Canadian company is already established as a cleared facility, immediate advice can be returned to the U.S. DOD. If no previous facility clearance has been recorded with the DSS/Security Branch, it will be necessary to institute inspection and clearance procedures before the U.S. DOD can be advised of the company's status.
- b) Industrial Security Division (ISD) advises the cognizant U.S. DOD in writing of the facility clearance of the Canadian company.
- c) Should a classified contract or subcontract subsequently be awarded to the Canadian company, the DSS/Security Branch assumes responsibility for security of the information or work on behalf of the U.S. DOD. Security requirements must be adhered to for the duration of such contract or subcontract.

4.4 Transmission of Documents and Materials

It should be noted that a visit clearance to a U.S. establishment permits access to classified information and/or material on an oral and visual basis only. If an exchange of classified documents (for example, plans, specifications, etc.) or material (hardware, etc.) is envisaged, the Canadian company should so notify the DSS/Security Branch as soon as possible, preferably during the negotiation phase when a contract is being established. It is stressed that exchange of classified documents and/or material can be effected on a government-to-government basis only.

When negotiations with Canadian firms for defence work are conducted through the Canadian Commercial Corporation, classified Bid Sets and similar material are supplied to Canadian firms through that office after the facility security clearance and other industrial security requirements have been confirmed by the DSS Security Branch.

4.5 U.S. Representation

Canadian firms must often decide whether their own domestic sales force or locally appointed sales representatives can best penetrate the U.S. defence market. Where products or services are totally unclassified and there is no requirement to enter U.S. government or industrial facilities where classified equipment is located, a Canadian firm should encounter few problems in employing U.S. citizens to promote their products.

On the other hand, should U.S. classified information, equipment or areas within facilities require security clearances, problems can be expected. These include determining how the U.S. citizens can establish themselves as cleared representatives of a Canadian firm under U.S. industrial security regulations. Even when U.S. citizens have been previously cleared on their own requirements, such a clearance may be affected when representing non-U.S. firms.

Before finalizing such relationships, the U.S. representatives should be advised to consult with the local office of the Defense Contract Administration Services (Region, District or Office) nearest to his geographical location. Canadian firms should consult with the DSS/Security Branch for further information. Where possible, DSS will co-ordinate the matter with the DCAS.

4.6 Summary

The information in this Section does not cover all aspects of security, and it is suggested, therefore, that specific guidance in this regard be obtained from the Security Branch of DSS in the initial phases of participation in the Canada-United States Production Sharing Program which might involve classified projects. There are three general rules to be adhered to when applying for clearances in connection with this Program:

- a) It is essential that complete and explicit reasons for visits be given to DSS/Security Branch outlining the exact subject matter to be discussed. The major source of delay in securing approvals is lack of adequate explanation of the "need-to-know".
- b) The request should be made as far in advance as possible to allow for the required processing.
- c) The focal point for all contract and follow-up on visit clearance and initial documentary exchange procedures is:

Chief,
Industrial and Protective Programs Division
Security Branch
Department of Supply and Services
3rd Floor, Tower "C"
Place du Portage, Phase 3
11 Laurier Street
Hull, Quebec K1A 0S5

5.0 Limitations of the Program

Money required by the U.S. Military Departments for operations and procurement of materiel is voted for each fiscal year by the United States Congress. The money is provided by enactment of a law each year called the Defense Appropriations Act. At various times, special conditions have been introduced into the Defense Appropriations Act, which restrict the freedom of the Military Departments to spend the authorized funds in certain ways. These legislative restrictions tend to become perpetuated in subsequent annual Defense Appropriations Acts, and sometimes they permanently restrict the scope of Canadian participation in U.S. defence programs. These restrictions are outlined below, as well as those restrictions that arise from other U.S. laws or regulations.

Inasmuch as the U.S. Defense Appropriations Act changes annually the restrictive legislation described below may well vary from year to year. It is advisable to confirm the status with the Defence Programs Bureau/U.S. Division.

5.1 The Berry Amendment

The Defense Appropriations Act customarily contains a restriction known as the "Berry Amendment" regarding the use of appropriated funds for the procurement of articles of food, clothing or certain textile materials, and specialty metals.

This restriction generally prohibits the U.S. Armed Services from procuring supplies consisting in whole or in part of any food, clothing, cotton, wool, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, or coated synthetic fabric not grown, reprocessed, reused or produced in the United States or its possessions.

Currently the above restrictions of 6-302 do not apply to the following:

- a) Acquisitions outside the United States in support of combat operations;
- b) Acquisitions by vessels in foreign waters;
- c) emergency, acquisition or acquisitions of perishable foods by establishments located outside the United States for the personnel attached thereto;
- d) acquisitions of those supplies listed in DAR6-105 as to which the list does not make this part expressly applicable;
- e) small purchases for the purposes of this exception, a small purchase shall mean an acquisition action as distinguished from a single line item involving a total dollar amount not in excess of \$10,000;
- f) acquisition of end items incidentally incorporating cotton, or wool, of which the estimated value is not more than 10 per cent of the total price of the end item--provided, that the estimated value does not exceed \$10,000 or 3 per cent of the total price of the end item, whichever is greater;

- g) any articles of food or clothing of any form of cotton, woven silk and woven silk blends, spun silk yarn for cartridge cloth, synthetic fabric, coated synthetic fabric, or wool as to which the Secretary concerned has determined that a satisfactory quality and sufficient quantity grown or produced in the United States or its possessions cannot be procured as and when needed at United States market prices; and
- h) supplies purchased specifically for commissary resale (see DAR6-103.7).
- i) purchases of specialty metals or any item incorporating specialty metals, as to which the Secretary concerned or his authorized designee has determined that a satisfactory quality and sufficient quantity melted in the United States or its possessions cannot be acquired as and when needed at U.S. market prices;
- j) purchases of specialty metals below the prime contract level for programs other than those for aircraft, missile and space systems, ships, tank-automotive, weapons and ammunition (see 7-104.93 (a)); and
- k) purchases of specialty metals (see 7-104.93 (b)). or chemical warfare protective clothing (see 7-104.13) when such purchases are necessary to comply with agreements with foreign governments requiring the United States to purchase supplies from foreign sources for the purposes of offsetting sales made by the U.S. Government or U.S. firms under approved programs serving defense requirements or where such acquisition is in furtherance of an agreement with a qualifying country (see e.g., 6-001).

Recent decisions by the U.S. Government have allowed:

- a) the fabrication of parachutes in Canada provided the fabric used was of U.S. origin;
- b) the packaging of foodstuffs provided they were of U.S. origin and were processed in the U.S.

5.2 Specialty Metals

Commencing with the Defense Appropriations Act for Fiscal Year 1973 (which ended on June 30, 1973) the United States Congress has added a "Specialty Metals" rider to the Berry Amendment (see 5.1) which has affected Canadian defence industry in the past. Currently this constraint has been waived (see 5.1(ix) above). This restriction prohibits the acquisition of supplies consisting in whole or in part, of specialty metals including stainless steel flatware which have not been melted in steel manufacturing facilities located within the U.S. or its possessions.

It can be reinstated at anytime with subsequent ill effects on Canadian manufacturers supplying the U.S. military market. The term "Specialty Metal" includes:

- a) steels, where the maximum alloy content exceeds one or more of the following limits: manganese, 1.65 per cent; silicon, 0.60 per cent; copper, 0.60 per cent; or which contains more than 0.25 per cent of any of the following elements: aluminum, chromium, cobalt, columbium, molybdenum, nickel, titanium, tungsten, or vanadium.

- b) metal alloys consisting of nickel, iron-nickel and cobalt base alloys containing a total of other alloying metals (except iron) in excess of 10 per cent.
- c) titanium and titanium alloys.
- d) zirconium and zirconium alloys.

Should a Canadian company meet resistance by U.S. contractors in the interpretation of the Specialty Metals clause, contact the appropriate Trade Commissioner in the U.S. or Defence Program Bureau/U.S. Division requesting assistance to clarify the situation.

5.3 Burns and Tollefson Amendments

Two clauses of the Defense Appropriations Act prohibit purchase of any naval vessel from foreign sources as well as the subcontracting of "major components" of naval ship hulls or superstructures to foreign yards. The term "major components" is not precisely defined; therefore Canadian companies interested in that type of work should consult with the U.S. Division of Defence Programs Bureau, External Affairs, to ascertain the situation pertaining to particular U.S. programs.

5.4 Small Business Set-Asides

The U.S. Small Business Administration (SBA) has developed programs with the U.S. Armed Services and DLA under which Government acquisitions are set aside, in whole or in part, for tendering by U.S. small business firms on a competitive basis.

A U.S. small business concern is generally one that:

- a) is independently owned and operated, and is not dominant in the field of operation in which it is bidding on Government contracts (DAR 1-701.1(a)(1));
- b) conforms to Industry Small Business Size Standards. (DAR 1-701.1(a)(2)).

A U.S. Contracting Officer can agree with the Small Business Administration to set aside "the entire amount of an individual acquisition or a class of acquisitions where there is a reasonable expectation that offers will be obtained from a sufficient number of responsible small business concerns so that awards will be made at reasonable prices" (DAR 1-706.5(a)).

A set-aside for U.S. small business can be a portion of an acquisition where it is found that the procurement can be divided into two or more economic production runs or reasonable lots, and further, where "one or more small business concerns are expected to have the technical competency and productive capacity to furnish a severable portion of the procurement at a reasonable price" (DAR 1-706.6(a)).

In addition, under the SBA a policy has been established to encourage the use of women-owned businesses in subcontracting (DAR 1-708).

Acquisition of supplies which were developed and financed in whole or in part by Canadian sources under the U.S.-Canadian Defence Development Sharing Program shall not be set aside for small business. Supplies covered by the Program shall be identified by the cognizant Department.

In instances of partial set-aside Canadian companies will find the following note in Invitations for Bid or Requests for Proposal:

Notice of Partial Small Business Set-Aside (1972 July)

a) General. Part of this procurement identified in the Schedule as the "set-aside portion," has been set aside for award only to small business concerns. Award of the set-aside portion will be made after awards have been made on the non-set-aside portion.

b) Procedures.

1. Determining Eligibility.

(a) To be eligible to participate in the set-aside portion of this procurement, a small business concern must submit a responsible offer on the non-set-aside portion. (DAR 1-706.6(c) and 7-2003.3).

It is also U.S. Department of Defense policy to afford U.S. small business concerns "to be considered fairly as subcontractors" (DAR 1-701.1). It will be seen that such firms are not to be given special privileges at the subcontract level; they are merely to be given equal opportunity. Therefore, Canadian industry will have an opportunity to compete in the subcontract field, regardless of the fact that the prime contract may be set-aside for small business.

It should be noted that clause (i), under Section 60, No 02, Revision IA of the Standard Operating Procedure, Small Business Administration rules and regulations as per Part 121 of the Federal Register states:

"i) Foreign suppliers and firms supplying foreign products are not eligible to bid on small business set-asides. Bids from such firms on total set-aside procurements should be considered as non-responsive. However, a foreign small business concern which has a place of business located in the United States qualifies as an eligible concern under the Small Business Act if they use American materials, employ American labour, and pay federal and State taxes."

5.5 Labour Surplus Areas Set-Aside

Following is an excerpt from the DAR on this program: *"1-802 General Policy. Except as provided in 1-806 with respect to depressed industries, it is the policy of the Department of Defense to aid labour surplus areas (LSA) by placing contracts with LSA concerns, to the extent consistent with acquisition objectives and when such contracts can be awarded at prices no higher than those obtainable from other concerns and by encouraging prime contractors to place sub-contracts with LSA concerns. In carrying out this policy and to accommodate the small business policies of Section 1, Part 7, preference shall be given in the following order of priority to (i) LSA concerns which are also small business concerns, (ii) other LSA concerns and (iii) small business concerns which are not LSA concerns. In no case will price differentials be paid for the purpose of carrying out this policy. Heads of Procuring Activities and chiefs of purchasing and contract administration offices are responsible for the effective implementation of the Labour Surplus*

Area Program within their respective offices. Responsibility for administration of the program may be assigned to small business specialists appointed pursuant to 1-704.3.

Areas eligible under this program are determined by the Department of Labour.

A similar program exists at the subcontracting level.

1-805. Subcontracting With Labour Surplus Area Concerns

1-805.1 General Policy

(a) *It is the policy of the government to promote equitable opportunities for labour surplus area concerns to compete for defence subcontracts and to encourage placement of subcontracts with concerns which will perform such contracts substantially in labour surplus areas in the order of priority described in 1-802 where this can be done, consistent with efficient performance of contracts, at prices no higher than are obtainable elsewhere."*

5.6 Small Disadvantaged Business Concern

It is U.S. Department of Defense policy to place a "fair proportion of its total purchases and contracts with small business concerns and small businesses owned and controlled by socially and economically disadvantaged individuals. Such individuals are defined as those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities. (DAR 1-702(a), DAR 1-701 and 1-701.2).

To implement this policy such concerns are given every opportunity to participate in Department of Defense programs and enjoy all the privileges of Small Business Set-Asides and SBA administrative and financial support.

5.7 Depressed Industries

Certain entire industry sectors in the United States may, under special circumstances, be considered to be "depressed industries", in which all U.S. government procurements of their products are restricted to U.S. sources. The DAR reference is:

"1-806 Depressed Industries

1-806.1 General. When an entire industry is depressed, the Director of the Federal Preparedness Agency of the General Services Administration may, under Defence Manpower Policy No. 4A, establish appropriate measures on an industry-wide, rather than on an area, basis. Designations of such industries are made by the Federal Preparedness Agency and such industries will be given special treatment as specified therein. Paragraph 1-806.2 reflects pertinent requirements with respect to the Petroleum and Petroleum Products Industry."

5.8 Military Assistance Program (MAP)

Foreign content in items procured by the United States in implementing its Military Assistance Program (MAP) cannot exceed 50 per cent of the value of the end item. (See DAR 6-700). Canadian contractors are therefore not eligible to bid on prime contracts for MAP procurement except as noted in DAR 6-702.

However, as subcontractors, Canadians firms may supply up to 50 per cent of the value of the end item. Such subcontract quotes are eligible for duty-free entry if they meet other Defence Production Sharing standards for eligibility.

5.9 Foreign Military Sales

Canadian firms may supply items for U.S. Foreign Military Sales, as if they were for and used by the U.S. Government. This may be particularly important to Canadian firms because the foreign customers may stipulate the source of the item (DAR 6-1307(a)). Where a Canadian firm has been a partial supplier to the U.S., it has proven possible to influence the customer to stipulate the Canadian supplier as his designated source.

5.10 Construction Contracts

The waiver of the Buy American Act and exemption from United States customs duty are not applicable to materials purchased for United States military construction contracts to be performed in the United States, its possessions, or Puerto Rico.

In these cases Canadian materials are not treated as domestic materials; they are considered as foreign materials and their use must receive prior approval by the Secretary of Defense.

5.11 Engineer Civil Works Programs

The U.S./CDA Defence Production Sharing Agreement does not include U.S. Army Engineer Civil Works programs. Therefore Canadian bids on such contracts are subject to the Buy American evaluation factor (6 per cent or 12 per cent). Such requests for bids, proposals, etc. are identified with the letters CW after the bid identifier number. (DAR 6-102.3(c) and 6-104.4(f)).

5.12 U.S. National Disclosure

The U.S. government has a policy which defines those areas of technology and weaponry which it is considered to be not in the national interest of the U.S. to disclose to any other country.

This National Disclosure Policy, which itself is unavailable to Canada, is known from experience to prohibit disclosure to any country, including Canada, information in the following areas: military spacecraft and satellites, electronic warfare equipment, post-nuclear-explosion radiation effects on material and equipment, rockets, nuclear weapons, marine nuclear propulsion and doubtless others.

Many new major weapons systems being acquired

by DOD require access to information in one or more of these areas and Canadian industry is usually unable to participate because of inability to obtain all the relevant specifications.

5.13 Balance of Payments (Gold Flow) Restrictions

Under an emergency program going back to 1963, the U.S. Military Departments will not buy goods from non-U.S. sources when destinations are overseas, unless the lowest U.S. bid is at least 50 per cent higher than the low foreign bid.

It should be noted that this restriction applies only to United States military procurements clearly destined for use outside of the United States or Canada. The great majority of United States procurement goes into the military inventory, with the contract consignment point within the United States, and these procurements are not affected by the balance of payments restrictions.

Canadian manufacturers can participate as sub-contractors to United States prime contractors carrying out contracts for supplies for off-shore use. Canadian components can be incorporated into United States end products to the extent of not more than 50 per cent of the end product cost. Duty-free entry is available.

6.0 Legislation Affecting Defence Trade

6.1 General

Order-in-Council PC 1970-1913, which was promulgated in November 1970, has simplified matters for Canadian manufacturers requiring imported materials for U.S. defence work. That Order-in-Council is implemented by Department of National Revenue (DNR) memorandum D53-11, which is reproduced in the companion to this book, the "Defence Export Shippers' Guide".

The United States laws which affect Canadian defence shipments are the Buy American Act and Customs Tariff. The following sections, together with the "Defence Export Shippers' Guide" which is being published separately, provide adequate guidance to Canadian defence exporters for all but the most unusual situations. The U.S. Division of Defence Programs Bureau will provide advice if and when required.

6.2 Buy American Act

6.2.1 Supply and Service Contracts

For a number of years Canadian suppliers of defence materiel enjoyed specific exemption from the Buy American Act provisions under a complicated process involving the official "listing" of exempt items. U.S. Department of Defense involvement with various NATO country governments has resulted in the dropping of this process and in the designation of a number of countries, including Canada as "Participating Countries," to which the provisions of the Buy American Act do not apply in respect to defence material.

Canadian materials and products are considered to be U.S. goods for the purposes of the Buy American Act by virtue of designation of Canada as a participating country DAR 6-001.1(f) and 6-001.5(c). There are certain exceptions to this consideration if a Canadian supplier is in competition with a supplier from a "non-participating" country (DAR 6-104.4). Canadian suppliers should be familiar with the methods of evaluating offers as contained in this DAR paragraph.

Basically the Buy American Act exemption applies at both the prime and subcontract level of supply.

6.2.1.1 Prime Contracting

Since Canada is designated as a "Participating Country" (DAR 6-001.5(c) and 6-001.1(f)), Canadian materials and products are considered to be U.S. goods for the purposes of the Buy American Act.

6.2.1.2 Subcontracting

When a U.S. defence contractor is incorporating Canadian supplies, whether the supplies are listed or not, they are considered to be U.S. material for the purposes of the Buy American Act. Thus, the U.S. prime or subcontractor at any level can buy the components of his product from a Canadian

source (DAR 6-103.5). This applies only to supply and services contracts; for the regulations governing construction contracts see Section 6.2.2.

U.S. contractors who are uninformed or who are reluctant to procure supplies of Canadian origin can be referred either to the Defense Acquisition Regulation or to the Buy American clause in their contracts to confirm that Canadian components are considered to be domestic. If necessary, a U.S. prime contractor may obtain from the Service Contracting Officer a ruling in writing concerning the proposed use of Canadian or foreign supplies.

6.2.1.3 Research and Development

The Buy American Act relates only to physical materials and is not concerned with contracts in which the supplier delivers findings resulting from a research and development contract. If such a supplier also delivers prototypes or other hardware, the above regulations regarding Canadian supplies are applicable.

6.2.2 Construction Contracts

U.S. military contracts for construction, including construction materials bought as part of construction contracts to be performed in the United States, its possessions or Puerto Rico, are not eligible for Buy American Act exemption or duty-free entry. Canadian materials included as part of a prime construction contract are classified as foreign materials and are therefore considered on the same basis as those offered by suppliers from other countries. In addition to Buy American Act penalties and the necessity of paying duty, bids proposing use of foreign construction materials including items of Canadian origin are subject to Secretary of Defense approval prior to the award of contract.

In view of these restrictions, Canadian firms wishing to bid on such contracts should obtain full details of applicable regulations and directives from both the general contractor concerned and the responsible U.S. Military Agency well before contracts are awarded.

6.3 U.S. Tariffs and Duty-Free Entry

6.3.1 General

The Department of Defense of the United States has special statutory authorization to arrange duty-free entry for acquisition of goods (including spare parts) from other countries. This arrangement also extends to the importation of Canadian defence supplies by American companies carrying out defence contracts. The "Defence Export Shippers' Guide" provides necessary guidance on the subject.

6.3.2 Restriction of Duty-Free Entry

DAR 6-602 does however provide that if a U.S. contractor has been awarded a fixed price type contract, based on providing a domestic end product or component, he cannot subsequently furnish a foreign end product or component (including a participating

country end product or component) and receive a duty free entry certificate without an appropriate reduction in contract price.

6.4 Drawback on Goods Manufactured or Produced in Canada and Exported

Canadian Customs regulations permit the payment of Drawback of duty when Canadian duty has been levied on imported goods that are used in the manufacture of goods subsequently exported from Canada in a new and unused condition. Upon export, the importer may apply for recovery of a portion of the duty and taxes paid on the imported goods incorporated into the exported article.

Although most instances of Canadian firms importing material and/or parts from the U.S. for defence production sharing work will be eligible for duty remission under Department of National Revenue Memorandum D53-11, cases exist where payment of Canadian duty is required before the goods may be imported. These cases include:

- a) Imports needed to carry out Canadian Government defence contracts, which are not covered by that remission, and
- b) Importations of small amounts of dutiable material and/or parts, where the DNR decide the administrative costs of monitoring the duty-free entry do not warrant remission of the duty.

In the event of (b) the Canadian firm is entitled to claim Drawback of duty on the imported materials and/or parts when the finished product is exported. Procedural details can be obtained from any Canadian Customs office.

6.4.1 Remission of Duty on Goods Imported for Processing and Subsequent Export

The provisions of Order-in-Council P.C. 1979-615 (DNR Memorandum D17-30), entitled an Order Respecting The Remission of Customs Duty on Goods Imported for Processing and Subsequent Export provides for the remission of duty on imported goods used in the manufacture of goods for export. A manufacturer that has an established pattern of export sales or a bona fide contract or sales agreement may be authorized, upon approval of an application to the Minister of National Revenue, to import under this Order.

6.5 Temporary Importation of Goods

6.5.1 United States to Canada

Materials or equipment owned by the U.S. government qualifies for a general duty exemption under Customs Tariff Item 70800-1. The Department of National Revenue will provide details regarding the procedures for claiming exemption in such cases.

There is no general statement of exemption from duty for privately-owned equipment entering Canada from the United States on loan for production, research or test purposes except that of 6.5.1.1 below. Each request for exemption is handled individually. Further information on procedures and regulations may be obtained from the Deputy Minister, Department of National Revenue, Customs and Excise, Ottawa. The Canadian contractor who is borrowing the equipment should write to the Deputy Minister, well in advance of the shipping date, stating the purpose and circumstances under which the proposed loan is to be made. If an urgent situation arises, the Headquarters Operations Directorate of the Department of National Revenue should be asked for assistance.

6.5.1.1 Temporary Importing for Manufacturing Purposes

Canadian firms awarded contracts to manufacture products under the Defence Production Sharing Program may import moulds, patterns, tooling, cutting tools, dies, testing machines and instruments which are committed by design and for use exclusively in the production or testing of goods produced under the terms of the contract. (Refer to paragraphs 2 and 3 of DNR Memorandum D53-11).

6.5.2 Canada to the United States

Schedule 8, Part 5, of the Tariff Schedule of the United States includes a number of tariff items under which articles may be admitted free of duty, under bond. Attention is invited especially to items 864.30 and 864.55 which may be relevant for Canadian companies wishing to bring product samples into the United States. Canadian companies contemplating such activity are urged to obtain specific guidance in advance concerning each individual case from U.S. Customs at the proposed port of entry.

6.6 Defective Goods Returned to Canada

Procedures to be followed for the return to Canada of articles needing rework are outlined in paragraph 3.4.1 of the "Defence Export Shippers' Guide". If the goods originally entered the United States free of duty, nothing further is required, but if, for some reason, duty has been paid upon original entry, the U.S. firm may receive a refund of the duty when the goods are returned.

The U.S. Tariff Act of 1930, Section 313(c), as amended, covers this case as follows:

"Merchandise not Conforming to Sample Specification"

Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from Customs custody, unless the Secretary authorizes in writing a longer time, returned to Customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties."

The rejected merchandise may be returned to U.S. Customs custody at any port of entry and claims for refund filed there. This U.S. Customs Office in turn will contact the original port of entry concerning details of the importation.

Application for an extension of time within which to return the merchandise to Customs custody should be filed with the Collector at the port where the merchandise is to be returned and drawback entry filed.

The Canadian Customs Tariff permits the duty-free re-entry of defective goods into Canada as follows:

- a) The provisions of Order-in-Council, P.C. 1970-1913, (DNR Memorandum 53-11) provide for remission authority in connection with the re-importation of faulty or rejected equipment. Remissions should be claimed in all cases where the rejected equipment contains material or components that had previously entered Canada under the remission provisions of the Order.
- b) Contractors, who have exported defence equipment manufactured exclusively from Canadian supplies or from imported supplies where no previous remission benefits have been claimed, can claim the release of re-imported faulty or rejected equipment under Tariff Item 70905-1 or Tariff Item 70910-1.

When re-importing under the 709 tariff items, the goods would not be eligible for entry under the items unless the amount of duty allowed under any previous refund, drawback, or remission is repaid to the Crown.

Each case should be decided according to its individual circumstances by referring it to the Headquarters Operations Directorate of the Customs and Excise Division of the Department of National Revenue.

6.7 Defective Goods Returned to the United States

Any further clarification of Canadian Customs regulations outlined in this Section may be obtained if needed from:

Director
Field Liaison Division
Customs and Excise,
Department of National Revenue,
Ottawa, Ontario K1A 0K2

In the case of a Canadian firm having to return defective goods to its American supplier, regulations provide for a refund of customs duty and taxes paid on the original importation of the goods, and duty-free entry of such goods to the United States.

Canadian Department of National Revenue Memorandum D16-2, titled "Remission of Duty Sales and Excise Taxes on Goods that are Not the Goods Ordered", makes provision in Section 3 for remission of duty paid as follows:

"(3) Remission is hereby granted on the duty and taxes paid on goods that are unsatisfactory,

- a) through an error on the part of the manufacturer, exporter or shipper; or*
- b) through damage received before release from Customs in Canada."*

Applications for refund of duty and taxes must be made within two years of the date of entry (Section 114 Customs Act). The goods to be returned or destroyed shall be delivered to a Collector within 24 months from the date on which duty and taxes were paid.

Memorandum D16-2 provides full procedural details for claiming refunds in such cases. Claims should be made on Canadian Customs Form B2 and filed with the Collector of Customs at the original port of entry.

Where damaged or broken goods are received they must be reported within thirty (30) days from the date of entry to the Collector of Customs at the port where clearance was effected. (Section 61 Customs Act.)

Where goods are short received, they must be reported within 90 days from date of entry to the Collector of Customs at the port where clearance was effected. (Section 112 Customs Act.) DNR Memorandum D16-4 titled "Refund of Duty, Deficiency in Quantity of Duty Paid Goods", explains the policy in this area.

Where inferior quality goods are received and not exported from or destroyed in Canada DNR Memorandum D16-5, titled "Refund of Duty on Inferior Quality Goods not Exported or Destroyed" outlines the Department policy and procedures for filing a refund claim.

Having received a refund from the Canadian Government of duty previously paid, the goods being returned to the United States may then enter the United States duty-free under the provisions of paragraph 1615(a) of the U.S. Tariff Act of 1930, as amended.

Para. 1615(a) states that:

"Articles the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means" will enter duty-free.

If, however, some components of the goods in question were imported into the U.S. originally, and at the export of the final goods, duty draw-back was received, a duty may be levied on the defective goods returned to the U.S. up to but not greater than the amount of the U.S. drawback originally received.

Complete procedural details are outlined in the U.S. Customs Regulations dealing with "Domestic Products Exported and Returned".

The procedure requires:

- a) A statement by the Canadian firm that the goods being returned have not been advanced in value.
- b) Completion by the U.S. consignee of U.S. Customs Form 3311.
- c) Presentation of completed U.S. Form 4467 which will indicate the amount of drawback that was allowed at the time of the original exportation.

An alternative to this method of obtaining duty-free re-entry of defective U.S. material to the U.S. is provided by Public Law 85-414. This law amends the Tariff Act of 1930 sub-division (1) section 308, to permit:

"Temporary free importation under bond, for exportation, of articles to be repaired, altered or otherwise processed under certain conditions and for other purposes."

This duty-free provision does not include importation of alcohol, ethyl alcohol or wheat, in any of their various forms.

All waste by-products and irrecoverable losses which result from repair, alteration or further processing will be reported to U.S. Customs officials. Any such articles or waste products of value must be exported or destroyed under U.S. Customs supervision within the period of the bond.

Procedures for posting bond and obtaining temporary entry are outlined in sections of U.S. Customs Regulations dealing with "Temporary Importations Under Bond".

If on re-exporting the repaired commodity or its replacement to Canada, it can be determined that some of its components are eligible for duty draw-back by being of Canadian manufacture, claims for such drawback will be allowed.

6.8 Canadian Federal Sales Tax

Federal Sales Tax does not apply to goods exported from Canada to the United States provided the goods have not been used in Canada. This applies to goods for both civilian and military use, and is provided for in the Excise Tax Act, which statute imposes the sales tax.

Canadian firms are entitled to a refund of the sales tax previously paid on unused goods sold to the U.S. government.

Department of National Revenue Memorandum D-17-17, dated 25 Oct. 1978 provides for the remission of Sales Taxes (in addition to Customs Duties and Excise Taxes) in cases where Canadian manufactured goods are shipped to the U.S. Military Services at sites in Canada. This applies even though the goods remain permanently or temporarily in Canada as long as the title or ownership is vested in the U.S. government. Certificates, stating that the goods in question are or will become the property of the U.S. government, and are to be used solely and exclusively in joint Canada-United States projects or U.S. establishments in Canada, and signed by an authorized representative, are required.

If the sale of the goods is by a Canadian manufacturer, licensed as such, or by a wholesaler holding a federal sales tax licence, it will not be necessary to pay the tax and then claim a refund. The sale may be effected without the application of sales tax provided the conditions outlined in the above paragraph are observed. If during the completion of a prime or sub-contract for the U.S. Services, inventory is used on which sales tax has already been paid, refund may be claimed provided it can be proved that the goods were used under exempt conditions as outlined above, and provided further that the claim is submitted within two years of the time the claimant sold the goods to the U.S. Government.

6.9 Canadian Provincial Sales Taxes

Nine of the ten provinces, namely, British Columbia, Manitoba, New Brunswick, Newfoundland, Nova Scotia, Ontario, Prince Edward Island, Quebec, and Saskatchewan levy sales tax established by provincial legislation and regulations. It is therefore impossible to give a general ruling on the applicability of provincial sales tax on Canadian goods sold directly or by sub-contracting to the U.S. acquisition agencies.

APPENDIX

Trade Commissioner Service Offices in the United States

WASHINGTON, D.C.

Director and Counsellor
(Defence Production)
Canadian Embassy
2450 Massachusetts Avenue N.W.
Washington, D.C. 20008

Tel: (202) 483-5505
Ext. 316

DETROIT, Mich.

Canadian Defence Production
Liaison Officer (CDDPL/DT)
Building 231
U.S. Army Tank Automotive Command (TACOM)
Warren, Michigan 48090

Tel: (313) 574-5233
574-5219

ATLANTA, Ga.

Consul and Trade Commissioner
Canadian Consulate General
400 South Omni International
Atlanta, Georgia 30303

Tel: (404) 577-6810

LOS ANGELES, Calif.

Consul and Trade Commissioner
(Defence Production)
Government of Canada
Defence Programs
c/o DCASMA—Van Nuys
Multi-Functional Field Office
Suite 810—Gateway Towers
3452 East Foothill Boulevard
Pasadena, California 91107

Tel: (213) 449-9708

BOSTON, Mass.

Consul and Trade Commissioner
Canadian Consulate General
500 Boylston Street
Boston, Massachusetts 02116

Tel: (617) 262-3760

MINNEAPOLIS, Minn.

Consul and Trade Commissioner
Canadian Consulate General
15 South Fifth Street
Minneapolis, Minnesota 55402

Tel: (612) 333-4641

BUFFALO, N.Y.

Consul and Trade Commissioner
Canadian Consulate General
One Marine Midland Center
Suite 3550
Buffalo, New York 14203

Tel: (716) 852-1247

NEW YORK, N.Y.

Consul and Trade Commissioner
Canadian Consulate General
1251 Avenue of the Americas
New York, N.Y. 10020

Tel: (212) 586-2400
Ext. 228

CHICAGO, Ill.

Consul and Trade Commissioner
Canadian Consulate General
310 South Michigan Avenue, 12th Floor
Chicago, Illinois 60604

Tel: (312) 427-1031

PHILADELPHIA, Pa.

Consul and Trade Commissioner
Canadian Consulate General
3 Parkway, Suite 1620
Philadelphia, Pennsylvania 19102

Tel: (215) 561-1750

CLEVELAND, Ohio

Consul and Trade Commissioner
Canadian Consulate General
Illuminating Building
55 Public Square, Suite 1008
Cleveland, Ohio 44113

Tel: (216) 771-0150

SAN FRANCISCO, Calif.

Consul and Trade Commissioner
Canadian Consulate General
One Maritime Plaza
Alcoa Building, Suite 1100
Golden Gateway Center
San Francisco, California 94111

Tel: (415) 981-2670

DALLAS, Tex.

Consul and Trade Commissioner
Canadian Consulate General
St. Paul Tower, Suite 1700
750 N. St. Paul Street
Dallas, Texas 75201

Tel: (214) 922-9806

SEATTLE, Wash.

Consul and Trade Commissioner
Canadian Consulate General
412 Plaza 600, Sixth and Stewart
Seattle, Washington 98101

Tel: (206) 223-1777

DAYTON, Ohio

Canadian Director
Defence Production Office
MCLDDP, Area "B"
Wright Patterson Air Force Base
Ohio 45433

Tel: (513) 255-4382
255-4537
255-4492

DETROIT, Mich.

Consul and Trade Commissioner
Canadian Consulate General
1920 First Federal Building
1001 Woodward Avenue
Detroit, Michigan 48226

Tel: (313) 965-2811

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